

BETWEEN:

GURJEET SINGH SRAN

Applicant

- AND -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

McKEOWN J.

The applicant, a citizen of India, seeks judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the Board) dated August 7, 1996, wherein the Board determined that the applicant was not a Convention Refugee.

The primary issue is whether the Board's decision was made without regard to the material before it because it ignored the evidence of past persecution and torture of the applicant and the applicant's testimony with respect to his allegations that the police considered that he had links to the militants. The other issue is whether the Board's finding of an internal flight alternative (IFA) was reasonably open to it on the evidence.

The Board did not deal with the applicant's allegation that he was tortured during three arrests and detentions. The applicant testified in his Personal Information Form that he was repeatedly and badly tortured during the three arrests and that on one occasion, he was hung upside down until unconscious. He also testified that he was beaten and given poor food at infrequent intervals. The Board did not consider this evidence of past persecution except in passing when it stated at page 5 of its reasons:

While the documentation generally corroborates the claimant's testimony that during

1993, he was subject to abuse at the hands of the police and that the police attempted to extract information and money from the claimant, there is an absence of evidence that such a practice is continuing in light of the current conditions.

Torture can never be excused at any time and it is insufficient to characterize it simply as abuse. The Board made no finding against the general credibility of the applicant. The only finding with respect to the applicant's credibility related to a finding of implausibility which I will review later. It is insufficient to say that the applicant was subject to abuse. I agree that the Board, when determining whether a person satisfies the definition of Convention refugee, deals with the possibility of future persecution. However, in my view, there should also be a clear acknowledgement of past persecution when a victim has been tortured.

With respect to the applicant's evidence that he was viewed by police as a supporter of the militants, the Board stated at page 5:

The claimant has not been charged with an offence and he is not sought as a supporter of militants. The claimant was not politically active and was not a supporter or member of the All India Sikh Student Federation, the Akali Dal or other Sikh organizations. Notwithstanding the claimant's experiences in 1993 at the hands of the police, the panel determines that there is no more than a mere possibility that the claimant would be persecuted by the police as an alleged supporter of Sikh militancy in light of current conditions.

While the Board refers generally to the claimant's experiences with the police in 1993, there are a number of specific instances the Board should have reviewed. With respect to the first arrest, the applicant testified that the police took his photograph and fingerprints for the record and informed the applicant that he must provide them with information of any militant activity in the area of which he became aware. Secondly, although the police released the applicant upon receipt of a bribe on his second arrest and detention, the police told the village council that they suspected that the applicant had involvement with the militants, and the police told the council that the applicant would be called back by the police when required. Thirdly, the applicant testified that the police threatened after the third arrest that if he did not give the police information about the militants, he would be killed. It was open to the Board to reject the applicant's evidence in this regard; however, the Board did not state whether it rejected or accepted this evidence.

In my view, the Board erred in ignoring the evidence of past persecution and the evidence relating to the views of the police that the applicant supported militants. As a result of the failure to consider this evidence, I am unable to determine whether the Board's finding with

respect to current country conditions would be the same if it had analyzed the evidence about the two areas. The Board found at page 5:

In light of the severely reduced presence of Sikh militants in the Punjab, the panel also determines that there is no more than a mere possibility that the claimant would suffer persecution at the hands of the militants if he were to return to the Punjab.

Furthermore, although there was documentary evidence of a reduced presence of militants in the Punjab, there was no evidence of a reduction of police activity against the militants. In fact, the evidence that indicates reduced presence of militants and the court's attempts to provide compensation to people who had been subject to police beatings specifically states that the police's defence was that these actions were justified because it was the government's wish that the police carry out such activities. The Board failed to consider the question of whether the claimant would suffer persecution at the hands of police if he were returned to the Punjab because it failed to analyze the effect of past persecution and the police allegations of his involvement with militants. Accordingly, the matter must be returned to a differently constituted Board for redetermination.

With respect to the issue of plausibility, in my view, the Board's finding was open to it. The Board's finding on the IFA cannot be supported. Again, the Board did not review all the evidence. The only evidence that the panel had on the subject of the police searching for militants and their supporters indicated that it was virtually impossible for a person to hide anywhere in India if police in the Punjab were looking for them. Although there are no formal communication methods available, it appears that there are many informal agreements which enable the police in the Punjab to hunt down anyone they are seeking. Because the Board ignored the applicant's evidence that the police were looking for him as a supporter of the militants, I am not in a position to know what the Board's finding would be on an IFA. The findings of the Board are limited. The Board adopted the conclusion of the Board in another case. At page 6, the Board quoted:

...there exists permanent, stable and successful Sikh communities outside Punjab, and that it would not be unreasonable for the claimant to integrate into one of these communities...

This conclusion does not address the question of whether a person who has been sought by the police in the Punjab can hide in one of these communities. The applicant in the present case was able to leave the country by shaving off his beard, having short hair and carrying a false passport with a different name. It is much more difficult for a person to maintain an alias for a period of time within the country if such person is really being sought by the police.

As I stated above, I cannot make such a finding and the matter will have to be determined by a newly constituted Board.

I am unaware whether or not there was any evidence with respect to the police looking for a militant in the case cited by the Board. However, there was no documentary evidence in the present case that contradicts the applicant's documentary evidence that demonstrates that anyone who is being sought by the police is not safe in another state. The Board had before it a response to an information request from the Documentation, Information and Research Branch, Immigration Refugee Board dated April 22, 1994. The following paragraph appears at page 12:

During a telephone interview on 3 February 1994, a representative of Asia Watch in Washington, DC provided the following information. Individuals who are wanted by the police in an Indian state cannot find a safe haven in another state. There are no internal flight alternatives for individuals who are known to the Indian authorities for their anti-government activities. [emphasis added]

In light of the failure of the Board to deal with this evidence, the finding of an IFA cannot stand. There was no contrary evidence that the respondent could refer to me which would contradict the documentary evidence that demonstrates that people wanted by the Punjab police are not safe in another state.

The application for judicial review is allowed and the matter is returned to the Board for redetermination by a differently constituted panel in a manner not inconsistent with these reasons.

Judge

OTTAWA, ONTARIO
July 29, 1997

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: IMM-3195-96

STYLE OF CAUSE: GURJEET SINGH SRAN

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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REASONS FOR ORDER BY: Mr. Justice McKeown

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